

Decision 06-04-072 April 27, 2006

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking on the  
Commission's Own Motion into Competition for  
Local Exchange Service.

Rulemaking 95-04-043  
(Filed April 26, 1995)

Order Instituting Investigation on the  
Commission's Own Motion into Competition  
for Local Exchange Service.

Investigation 95-04-044  
(Filed April 26, 1995)

**OPINION DENYING THE LOS ANGELES COUNTY  
PETITION FOR MODIFICATION OF DECISION 05-08-040**

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**OPINION DENYING THE LOS ANGELES COUNTY  
PETITION FOR MODIFICATION OF DECISION 05-08-040**

**I. Introduction**

By this decision, we deny the Petition for Modification of Decision (D.) 05-08-040 (Petition) filed on December 22, 2005, by the County of Los Angeles (County). In D.05-08-040, we authorized the implementation of a new 424 area code overlay of the existing 310 area code, whereby numbers are to become available for use with the new area code beginning on August 26, 2006. In its Petition, the County asks that the Commission suspend implementation of the overlay indefinitely while additional investigation is conducted.

We have carefully considered the claims made by the County to support its argument that the Commission should suspend the overlay indefinitely in order to conduct further investigation and to compile additional utilization data. As discussed below, however, we find no basis to halt the implementation of the overlay in order to conduct further inquiry, as proposed by the County.

Seven years ago, the Commission suspended implementation of the 310 area code overlay that had been approved to go forward in 1999. We suspended implementation then in response to valid concerns raised by a coalition of local governments that code exhaust assumptions underlying the order had not been adequately verified. In the intervening years, the Commission has undertaken a comprehensive program of number conservation and utilization monitoring measures to assure that any subsequent 310 area code relief plan would not go forward until proper measures had been carried out to ensure that a new area code was actually required.

In August 2005, in D.05-08-040, we ultimately determined that the time had arrived for implementing the new 310/424 area code overlay, and that no

further delay was feasible. The County claims, however, that the Commission has still prematurely implemented the overlay in D.05-08-040. Nonetheless, we conclude that the Commission is obligated to open the 424 area code in order to carry out its responsibility to provide numbering resources. Our mandate to implement area code relief is set forth in the September 15, 1999, FCC Order granting the Commission's April 23, 1999 Petition for Additional Delegated Authority to implement area code conservation and relief planning. The FCC Order requires that, in any area code in jeopardy where a number pooling trial had been implemented, the Commission must adopt an area code relief plan that could be implemented if numbering resources were in imminent danger of being exhausted. In D.05-08-040, we confirmed that a new area code plan must go forward in order to ensure an adequate supply of numbering resources.

As discussed below, we conclude that the County has not presented any convincing evidence to support a delay in implementing the overlay.

D.05-08-040 reached the proper determination that no further delay in the implementation of the 310/424 area code overlay is feasible consistent with our mandate to provide adequate numbering resources. Accordingly, we deny the County's Petition for Modification.

## **II. Procedural Requirements for Petitions for Modification**

As prescribed by Rule 47(b), a Petition for Modification must concisely state the justification for the requested relief, and must propose specific wording to carry out the requested modifications to the decision. In this instance, the County has provided no specific wording to carry out its request, but merely asks the Commission to suspend the overlay while pursuing additional investigations. Nonetheless, given the importance of the concerns raised by the

County, we shall consider the arguments raised by the County based on their substantive merits.

Rule 47 also requires that any factual allegations in a Petition for Modification must be supported with specific citations to the record in the proceeding or to matters that may be officially noticed. Allegations of new or changed facts must be supported by an appropriate declaration or affidavit. In support of its Petition, the County attached the “Declaration of Dr. Lee Selwyn” (Selwyn Declaration). The County also submitted a Reply Declaration of Dr. Selwyn. Based on the Selwyn Declarations, the County claims that there are several new and changed facts affecting number demand and supply within the 310 area code that do not appear to have been considered or addressed by D.05-08-040. Relying on these claims, the County seeks modification of D.05-08-040, asking for the immediate and indefinite suspension of the overlay implementation to allow for further analysis of number availability based on the gathering of additional data and investigation of the issues raised in the Petition.

The County has an interest in this matter since the 310/424 area code overlay will affect the residents, businesses, and governmental agencies located within County boundaries. The County undertook its own investigation of the need for the new 310/424 area code overlay in response to its constituents’ complaints following the issuance of D.05-08-040. The County states that its Petition was not filed sooner because it did not yet have the “new information” on number availability, recent industry trends, and other data, as presented in its Petition.

### **III. Responses to the Petition**

Responses to the Petition were separately filed by the California Cable & Telecommunications Association (CCTA) and by The Telephone Connection of

Los Angeles, Inc. and The Telephone Connection Local Services, LLC (TCLA). An additional response in opposition to the Petition was filed jointly by Cingular Wireless, Pacific Bell Telephone Company, Sprint Nextel Corporation, T-Mobile, Verizon California Inc., and Verizon Wireless (referred to collectively as the “Joint Telecommunications Carriers” or “JTCs”).

Responding parties oppose the Petition to the extent that it seeks to halt the implementation of the overlay, arguing that such a proposal would deny needed relief to the 310 area code. The JTCs claim that the Petition fails to raise any issue which has not already been fully considered by this Commission. The JTCs describe the numbering situation in the 310 area code as “dire” and claim that consumers and carriers will be harmed if there is further delay in implementing area code relief as ordered in D.05-08-040.

While CCTA and TCLA oppose suspension of the overlay implementation, they nonetheless support certain measures proposed by the County such as rate center consolidation and the porting of unassigned numbers as longer term remedies to promote more efficient utilization of number supplies.<sup>1</sup>

In addition to parties’ formal filings, we received letters from representatives of various local governmental entities with constituencies in the

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<sup>1</sup> In its response, TCLA also proposes that the Commission petition the FCC for assignment of a technology-specific overlay for wireless telephone numbers and for wireless carriers to assign all numbers on a prospective basis from the specialized overlay. This proposal does not appear to be directly responsive to the issue of whether or not halt implementation of the overlay, and is therefore beyond the scope of the Petition for Modification.

310 area code, expressing support for the County's Petition.<sup>2</sup> These letters have been reviewed and placed in the correspondence file.

The County was permitted to file a third-round reply to parties' responses on February 7, 2006, addressing certain responses made by parties and incorporating a Supplemental Declaration of Lee Selwyn. We have considered all of the above-referenced materials in reaching our decision denying the Petition.

#### **IV. Consideration of the County's Claims**

##### **A. Claim that the Commission Relied on Outdated Data and Erroneous Assumptions**

###### **1. Parties' Positions**

The County contends that in adopting D.05-08-040, the Commission relied on outdated number supply data "which dates back to the mid-1990's and through about 2000."<sup>3</sup> Specifically, Selwyn claims that the Commission relied upon number supply data contained in the March 16, 2000, Commission Telecommunications Division (TD) staff "Report on the 310 NPA" (as directed by D.99-09-067, and in the February 16, 2001, TD staff "Audit Report on the 310 Area Code." The March 16, 2000 TD Report provided statistics on number utilization in the 310 area code based upon representations of carriers. In order to provide independent confirmation of the reliability of the reported utilization

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<sup>2</sup> Letters in support were received from the South Bay Cities Council of Governments, the South Bay Association of Chambers of Commerce, City of El Segundo, City of Manhattan Beach, City of Carson, City of Palo Verdes Estates, and City of Inglewood.

<sup>3</sup> Petition at p. 8.



data, the Commission subsequently directed the TD staff to perform an audit of the number utilization data underlying the Report. As noted above, the resulting Audit Report was issued on February 16, 2001.

Selwyn claims that, to the best of his knowledge, “no specific data pertaining to the numbering resource utilization and availability in the ‘310’ area code beyond that underlying these two TD documents has been incorporated into the record in this proceeding or has been considered by the Commission in formulating D.05-08-040.” [Declaration at p. 5.]

Selwyn argues that the Commission should therefore place a halt to the overlay so that additional number resource data can be gathered (utilizing the Data Request form appended as Attachment 2 to the Selywn Declaration) in order to “refresh” what he characterizes as the “five-year-old dataset” relied upon in D.05-08-040.

Opposing parties filed comments disputing the County’s claims that the Commission relied on outdated data as a basis for ordering the area code overlay in D.05-08-040. They argue that in D.05-08-040, the Commission relied upon up-to-date data demonstrating that carriers were running out of numbers, and that an area code relief plan needed to proceed with implementation.

## **2. Discussion**

We find that the County’s claim that the Commission relied upon outdated information as a basis for implementation of the 310 area code overlay is in error. As a basis for D.05-08-040, the Commission reviewed data concerning numbering resources within the 310 area code, and concluded that “[i]n view of the limited stock of number supplies remaining in the 310 area code ...a new area

code must be implemented soon in order to replenish dwindling number resources to avoid code exhaust.”<sup>4</sup>

Contrary to the claim that D.05-08-040 relied upon outdated number data only “through about the year 2000,” the Commission staff has, in fact, continually monitored numbering resources in the 310 area code since the 310 Number Utilization Report was released in the year 2000. Further, we have adopted multiple reforms in recent years, as we have diligently pursued all feasible means to ensure that numbers are allocated efficiently, fairly, and consistently. Carriers submit detailed Number Resource Utilization Forecast (NRUF) Reports to the North American Numbering Plan Administration (NANPA) (which are also made available to and used by the Commission) two times a year. Commission staff review those reports regularly. In addition, staff review and respond to carrier “safety valve” requests, reclaim unused NXX codes, and are consulted by NANPA staff on unusual carrier requests for numbers. Also, pursuant to D.96-09-087, dated September 20, 1996, (Ordering Paragraph 5) periodic reports are regularly provided to the Commission providing updated statistics on the planned date for any NXX lotteries, together with the results of any such lotteries and the allocation of codes that results.

In addition to ongoing informal monitoring, the Commission formally summarized the status of its continuing review of number resources in D.03-10-060, issued October 16, 2003, including the supply and demand data for numbering resources in the 310 area code that had been reviewed up to that time. (See D.03-10-060 at 15-20.) We specifically directed in D.03-10-060 that

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<sup>4</sup> D.05-08-040 at pp. 24-25.

telephone numbers in the 310 area code continue to be closely monitored to ensure adequate supplies remained available.

The Commission staff continued to review and monitor number utilization up to the time that we determined that the area code overlay should begin implementation. In D.05-08-040, the Commission determined that it had:

...exercised due diligence to promote the most efficient use of number resources in the 310 area code. In view of the exhaustive measures we have implemented to promote efficient and fair number allocation, *we affirmatively conclude that no further measures are left to be performed as a basis to delay taking further action to provide for adequate supplies of number in the 310 area code.*<sup>5</sup>

As a result of such measures, the Commission successfully extended the life of the 310 area code several years beyond the date originally scheduled for an area code overlay. Nonetheless, implementing measures to extend the life of the area code does not relieve us of our obligation to provide timely area code relief when necessary to assure adequate numbering resources to serve the public.

In D.05-08-040, we explicitly relied on *then-current* number resource statistics as a basis for ordering area code relief, noting that “a total of 267 thousand-number blocks [plus ten (10) full NXX codes] currently remain[ed] available for assignment in the 310 number pool.” Therefore, the County is incorrect in claiming that the Commission relied on outdated data in assessing the need for 310 area code relief in D.05-08-040.

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<sup>5</sup> D.05-08-040, at p. 23 (emphasis added).

Moreover, since the issuance of D.05-08-040, remaining number supplies in the 310 area code have dwindled still further. As of the date of parties' comments on the Petition, only 114 thousands blocks remained available for assignment, indicating the threat of exhaust without the current overlay implementation. Although the Commission and the carriers have been replenishing the pool with unused resources when possible, the number of remaining thousand blocks has continued to decline.<sup>6</sup>

Given that numbering resources have been continually monitored, we find no justification for halting the overlay to gather additional data or to conduct an additional staff audit as proposed.<sup>7</sup> In authorizing the overlay, we considered claims that the existing number allocation system is subject to manipulation and inconsistency. In D.05-08-040, we took notice of the audit previously completed in 2001 by the Commission staff on the numbering resources for the 310 area code.<sup>8</sup> We determined in D.05-08-040 that, given the procedures already in place for ongoing monitoring and to assure efficient utilization of numbers, another audit was unnecessary.

The County further claims that even assuming unassigned number blocks in the number pool inventory are declining, the Commission relied on outdated data regarding the levels of carrier inventory. We separately address the County's claims regarding carrier inventory below. In summary, however,

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<sup>6</sup> See Comments of the Joint Parties, citing Neustar Pool Tracking Reports (showing a net monthly decline of thousands blocks).

<sup>7</sup> Petition at p. 14.

<sup>8</sup> D.05-08-040 at pp. 20-21.

we conclude that the County has provided no basis for modifying D.05-08-040 to halt implementation of the overlay while additional number utilization data is gathered or audits are conducted.

**B. Claim that Rate Center Consolidation Can  
Defer Need for an Overlay**

**1. Parties' Positions**

The County argues that the principal explanation for the underutilization of numbers in carrier inventories is the existence of separate rate centers in the 310 area code. Rate centers are geographic coordinates used by wireline carriers to measure and distinguish "local" versus "toll" calls. Central Office Codes are assigned on a rate center basis so that calls may be "rated" based on the distance that the call travels, as measured by the rate centers.

In certain cases, carriers may appear to have sufficient number resources on an aggregate basis, but may still lack numbers required in a particular rate center. Even if unused number blocks remain in certain rate centers, a carrier might be unable to use those numbers to serve customers in other rate centers with a shortage of central office prefixes or number blocks.<sup>9</sup>

The County claims that a solution to this shortage problem is to consolidate or eliminate the 16 separate rate centers within the 310 area code. In his Declaration, Selwyn argues that if the rate centers were eliminated or consolidated, the availability of numbers in the 310 area code would grow considerably, thereby deferring the need for the overlay. Selwyn argues that the

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<sup>9</sup> In the case of wireless carriers, however, it is technically possible, though sometimes undesirable, to use numbers from an adjacent rate center to provide customers with numbers even if there is a shortage of central office prefixes in the desired rate center.

continued use of rate centers only benefits the incumbent local exchange carriers (ILECs), making it possible for them to maintain distance-based pricing. Rather than proceed with the overlay, Selwyn proposes that the Commission consolidate a sufficient number of rate centers in the 310 area code – or all of them – so as to permit the shifting of numbering resources from locations with a surplus to locations with a deficit.

TCLA supports the proposal for the Commission to open an inquiry into consolidating rate centers in the 310 area code, arguing that the multiple rate centers are a primary reason for the underutilization of telephone numbers by carriers. TCLA proposes that priority be given to consolidating adjacent rate centers where demand for numbers has been high. TCLA also proposes that rate center consolidation should reflect local geographic calling areas. Currently, rate centers in the 310 area code cover areas smaller than a local calling area. TCLA, however, disagrees with the County's proposal to halt implementation of the overlay until rate center consolidation has been accomplished.

CCTA likewise agrees that rate center consolidation is an important objective for the Commission to pursue, but disagrees that the implementation of the overlay should be halted until rate center consolidation is accomplished. CCTA argues that halting implementation of the overlay to pursue rate center consolidation would prevent telecommunications providers from having access to numbering resources to meet customer demand.

## **2. Discussion**

The question of whether separate rate centers should be consolidated and/or eliminated is a legitimate area of inquiry that warrants further consideration as a potential long-term strategy for extending the lives of area codes. Nonetheless, rate center consolidation cannot simply be imposed

unilaterally by Commission order without due process. In the context of the Petition for Modification, the relevant question is whether there would be sufficient time to address rate center consolidation issues applicable to the 310 area code before code exhaust.

Selwyn argues that the Commission should “immediately” consolidate rate centers, and that there is sufficient time for such undertaking. Yet, he fails to support such claims in terms of the practical schedule constraints involved. Based on the current schedule, customers in the 310 area code must begin using 1+10-digit dialing for all calls on mandatory basis beginning on July 26, 2006. New numbers will be issued using the new 424 area code beginning on or after August 26, 2006. Even assuming an ambitious schedule, Selwyn fails to show how proceedings to consolidate rate centers could be initiated and concluded before August 26, 2006, in order to avoid numbering supplies running out. Accordingly, while rate center consolidation or elimination may be a useful long-term strategy to explore for extending future area code lives, the specific formulation of any plan to address rate center consolidation is more appropriately taken up in a separate order.

### **C. Claim that Recent Data and Industry Changes Indicate Reduced Demand for Numbers**

#### **1. Parties’ Positions**

The County asserts that the overlay should be halted because the Commission failed to consider recent industry trends and data pointing to a major slowdown in the demand for numbers.<sup>10</sup> The County claims that this

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<sup>10</sup> See Petition at pp. 9-10.

recent trend calls into question the assumption that a new area code is needed at this time to meet the demand for numbers. The County claims that demand, in particular for new wireline numbers, has been declining because customers are migrating from second residential access lines to broadband Internet access services and because many competitive local exchange carriers (CLECs) have merged or otherwise exited the market.

CCTA disputes the County's claims, arguing that to the extent that consumers are migrating away from second lines in favor of broadband, there will still be a continuing need for numbering resources, at least where such broadband is offered in the form of Voice over Internet Protocol (VoIP). CCTA points out that demand for such new services has been growing significantly. CCTA also makes reference to the cable telephony industry's significant infrastructure investments within California, providing evidence that overall demand for telephone number resources will be greater, not diminished.

## **2. Discussion**

We conclude that the County has failed to show that the overlay is not required based on claims that the Commission failed to consider recent trends regarding declines in demand. Even assuming that demand growth forecasts decline going forward, the fact remains that the 310 area code has already reached code exhaust since no more full NXX codes remain available for assignment to carriers. To that extent, it is academic to argue over the assumed level of future demand forecasts since full NXX codes have already run out.

The County points to number pooling and other conservation measures as indications of decline in demand for numbering resources. Number pooling does not reduce customers' underlying demand for numbering resources, but does promote more efficient allocation of those resources among



carriers. While we acknowledge that number conservation, including number pooling, has reduced carriers' requests for new numbers, such conservation effects were already taken into account in finding that area code relief was needed in D.05-08-040.<sup>11</sup> The effects of number pooling and related conservation measures did, in fact, enable us to defer implementing the 310 area code relief plan from its original expected exhaust date in 1999 until now.

In his Declaration, Selwyn also presents a summary of number utilization experiences in other states where overlays were implemented to support for his claims concerning utilization in the 310 area code. We are not persuaded by experiences in other states since the underlying record from those states is not before us. We have no way of confirming whether number utilization experiences in other states may be based on similar or different circumstances than what we face in the 310 area code.

Moreover, even if the anticipated growth in demand for certain carriers may have declined to some extent, Selwyn fails to show that overall demand for numbers in the 310 area code can continue to be met without implementing the area code overlay. Moreover, newer market sectors are poised to grow in demand. For example, as noted by CCTA, there is potential for demand growth from new technologies such as VoIP. D.05-08-040 noted that, in addition to carriers' demand for number blocks from conventional telephone service, additional number blocks may be demanded for newer technologies such as VoIP.

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<sup>11</sup> See e.g., D.05-08-040 at p. 21 ("The most effective number conservation tool is number pooling.").

In summary, we are unpersuaded by the County's claims that the overlay is not needed because certain categories of demand for new numbering resources may have declined relative to earlier expectations. Particularly in view of the fact that the entire supply of unassigned whole NXX codes has already been depleted, the demand for numbering resources in the 310 area code cannot continue to be met without going forward with the overlay as mandated in D.05-08-040.

**D. Claim that Existing Number Inventories are  
Sufficient to Meet Demand for Numbers in  
the 310 Area Code**

**1. Parties' Positions**

The County claims that a surplus of numbering resources remain available within carriers' individual inventories that could be used as a supply source for numbers in the 310 area code without the need for an overlay at this time. Through the Selwyn Declaration, the County claims that the Commission did not properly consider carrier inventories, particularly those held by the ILECs, in concluding that numbering resources were exhausting in the 310 area code.

Selwyn points to NRUF data from August 2005, indicating that the two ILECs possess combined inventories of nearly two million numbers and the wireless carriers have inventories of 341,000 numbers available for assignment to customers in the 310 area code. Selwyn further claims that apparent disparities in the NRUF data set suggest that an additional one million numbers or more may actually be available.

Selwyn argues that the perception of a shortage of numbers in the 310 area code is actually due to an imbalance in the allocation of number resources between ILECs and wireless carriers. Selwyn argues that the ILECs

hold the largest inventory, but face little or no demand for additional numbers going forward. Conversely, wireless carriers face a greater demand, but have a smaller inventory.

Opposing parties dispute the claim that carrier inventories provide a sufficient supply of numbers without the need for area code relief at this time. Parties report that since D.05-08-040 was issued, the remaining unassigned numbering resources in the 310 area code have *decreased* by almost 70%. At the time that D.05-08-040 was issued, there were 267 thousand-number blocks plus 10 full NXX codes still remaining available for assignment to carriers. Parties report that, as of the date of their response to the Petition, only 114 thousand-number blocks and no full NXX codes remained available for assignment to carriers.<sup>12</sup> Thus, opposing parties argue that the County's claims are not supported by the actual statistics.

## **2. Discussion**

The County has not justified its claim that carrier inventories contain a surplus of numbers that could be used to meet continuing demand without the 310/424 area code overlay.<sup>13</sup> The County offers no new information regarding carrier inventories that warrants placing a halt on implementation of the overlay.

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<sup>12</sup> In light of the fact that there are no remaining full codes available, Neustar met with all interested parties (including the Commission Staff) on January 17, 2006 to determine whether any of the currently unassignable codes in the 310 area code (e.g., the "310-310" and the "310-424") could be released to provide some additional relief before the overlay is implemented. In recognition of the lack of resources, the parties agreed to release the "310-424" which will ultimately provide ten additional thousand-number blocks.

<sup>13</sup> Petition at p. 11.

Even though we did not explicitly quantify carrier inventories in D.05-08-040, the total supply of carrier inventories has been, and is, a matter of public record.<sup>14</sup>

Moreover, we did take carrier inventories into account in concluding that numbers were running out and that a new area code was required in D.05-08-040. We have previously considered what action is warranted regarding carrier inventory levels within the scope of our authority. In raising claims regarding excessive inventory levels, the County fails to acknowledge the steps that the Commission has already taken in this regard.

The Commission filed a petition at the Federal Communications Commission (FCC) on September 5, 2002, for a waiver of the contamination threshold for thousand-block donations to the number pool. Raising the contamination level increases the threshold for unused thousand-number blocks in carrier inventory that must be returned and/or donated to the number pool, thereby promoting efficient levels of carrier inventory. The Commission, in its FCC petition, sought to increase the contamination threshold from 10% to 25% for all of California's area codes.

On August 5, 2003, the FCC granted a limited waiver to raise the contamination threshold from 10% to 25% for thousand-blocks donated to number pools in the 310 and 909 area codes.<sup>15</sup> In response to the FCC's limited waiver, an Assigned Commissioner's Ruling on August 21, 2003 directed carriers to donate 25% or less contaminated blocks to rate centers in the 310 and 909 NPAs, to actively monitor their inventory of telephone numbering resources,

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<sup>14</sup> See the FCC website <http://www.fcc.gov/wcb/iatd/number.html>.

<sup>15</sup> FCC 03-196, CC Docket No. 99-200, Released August 11, 2003.

to keep records of their donations, and to submit those records to the Commission by March 30, 2004.

The FCC's limited waiver afforded the Commission the opportunity to efficiently distribute and use scarce numbering resources as demonstrated by the resulting decrease in stranded telephone numbers within carriers' numbering resources inventories, the increase in available numbering resources, and by eliminating the need to open prefixes or NXX codes unnecessarily. Based on the Pooling Administrator's records, as shown below, the magnitude of the donations or returns between August 2003 and April 2004 was significantly higher than in similar time periods of previous years.

**Pooling Administrator's Records of Donations and Returns of Thousand Blocks for the 310 Area Code**

<i>Time Period</i>	<i>Thousand-Block Donations/Returns</i>
August 2001 - April 2002	4
August 2002 - April 2003	159
August 2003 - April 2004	406

A further ruling, issued by the Assigned Commissioner on July 16, 2004, directed carriers to return and/or donate all blocks remaining in their inventories that were less than 25% contaminated, excepting footprint blocks identified in FCC Order 03-196. The Assigned Commissioner also undertook to explore whether, or in what manner, the Commission might institute additional criteria for limiting the level of carrier inventory. The July 16, 2004, Assigned Commissioner's Ruling (ACR) called for comments on possible development of carrier inventory rules. A subsequent ACR on September 24, 2004, proposed rules to limit the levels of carrier inventories. At a workshop on October 4, 2004, participants had the opportunity to provide input on this issue.

The South Bay Coalition of Governments (SBCOG) filed comments supporting the establishment of inventory rules in response to the ACR. Several other parties filed comments asserting, however, that the Commission lacked authority to adopt rules for carrier inventories, or to direct the Pooling Administrator or the NANPA to determine a carrier's inventory.

The parties argued that FCC delegation of numbering authority placed specific limits on Commission action, including authority to determine a carrier's inventory. Although the FCC granted conditional authority to implement certain area code conservation measures, the parties argued that the

delegation was superseded by subsequent decisions in the FCC Numbering Resource Optimization (NRO) proceeding.<sup>16</sup> The NRO, released in March 2000, required among other things, that carriers keep no more than a six-month inventory of numbering resources. In the FCC First Report and Order, Order No. 00-104, ¶ 191, the FCC stated that a carrier should be able “to retain a sufficient number of thousands blocks to meet its six-month projection forecast.”<sup>17</sup>

Based on this FCC authorization, parties claimed that the Commission did not have authority to limit carriers’ inventory based on historic use or other restrictions, but that the states were merely to provide a forum for carriers to challenge the NANPA’s decision to withhold numbering resources. The NANPA was authorized by the FCC to withhold numbering resources from carriers that were not in compliance with FCC rules.

After developing a record, the assigned Administrative Law Judge (ALJ) prepared a Draft Decision, proposing rules to limit carriers’ inventory levels based upon historical usage rather than carriers’ forecasts. The Commission considered the Draft Decision, but did not adopt it, recognizing that it did not have jurisdiction to set rules for carriers’ inventories beyond what the FCC authorizes.<sup>18</sup>

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<sup>16</sup> See Report and Order and Further Notice of Proposed Rulemaking (NRO Order) FCC 00-104 at ¶ 7.

<sup>17</sup> FCC 00-104 at ¶ 191.

<sup>18</sup> In its report to the FCC on the effectiveness of the 25% contamination rate, the Commission did recommend that the FCC establish rules defining carriers six-month inventory needs. Thus, the Commission has taken all reasonable measures within its jurisdiction with respect to minimizing carrier inventories.

*Footnote continued on next page*

The SBCOG again raised this issue in the proceedings leading up to D.05-08-040, claiming that the Commission should not implement a new area code until after adopting rules limiting the level of carrier inventory. We again reached the same conclusion in D.05-08-040, noting that the Commission had already considered whether to adopt inventory rules. We again declined to do so in D.05-08-040, recognizing that the FCC delegated authority does not provide Commission jurisdiction to adopt such rules.

Notwithstanding the fact that this issue had already been addressed twice, the County continues to ask the Commission yet again to change its position on this issue. In making claims regarding carrier inventory levels, Selwyn relies on NRUF data which, itself, has been shown to be subject to error. The Commission staff has identified instances where NRUF data overstates available numbers through double-counting and related data errors. Yet, even aside from potential errors in the NRUF data set, we find Selwyn's arguments concerning carrier inventory to be unpersuasive.

As support for the claim that carrier inventories are excessive, Selwyn notes that the quantity of unassigned numbers held in carrier inventory in the 310 area code, as reflected in the NRUF data, has remained fairly constant over the 2001-2004 period. It is not surprising that carrier inventory levels would have remained fairly constant since such levels are based on six-month *demand* rather than a function of total remaining *supply* of numbers in the area code. Since carriers are permitted under FCC rules to maintain inventory sufficient to meet a six-month forecast, they have satisfied ongoing demand by drawing new

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numbers from other sources (i.e., either the NXX lottery, where applicable, or through the thousand-block number pool).

A relatively constant level of inventory over time, therefore, is not evidence that plenty of numbers remain available in the 310 area code. Rather, a constant level of inventory merely indicates that carriers have been drawing down the remaining supply of numbers to meet incremental demand from sources *other than* carrier inventory. A narrow focus on the constant level of carriers' inventories ignores the fact that number resources are exhausting as measured by the declining blocks in the number pool inventory and the depletion of full NXX codes. Moreover, under current carrier inventory rules, carriers *cannot* obtain new numbers unless they can demonstrate a clear need for additional resources.<sup>19</sup>

The Commission was aware of these provisions for the allocation of the remaining resources in ordering the overlay to go forward. We therefore properly determined in D.05-08-040 that there was no basis to delay proceeding with timely area code relief. Accordingly, in arguing that inventory levels are excessive or that the Commission should develop new carrier inventory forecasts, the County has provided no convincing justification to halt the overlay.

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<sup>19</sup> See e.g., D.05-08-040 at p. 22 (carriers must return blocks if they fail to activate them within six months, carriers must assign numbers sequentially, carriers must have a 75% utilization rate and be within six months of exhaust before they can obtain additional resources and the contamination level for the 310 area code has been increased from 10% to 25%).

## **E. Claim that the Commission Should Order Porting of Unassigned Numbers**

### **1. Parties' Positions**

Selwyn proposes that the Commission make a portion of the unassigned numbers in the ILEC inventories available to other carriers, including “contaminated” thousand blocks if necessary, in a sufficient quantity to satisfy other carriers’ demand. Selwyn specifically proposes that the Commission could require the two ILECs to make their inventories available “in a nondiscriminatory manner to other service providers, including both their own wireless affiliates, non-affiliated wireless carriers, and other wireline and paging service providers.” (Declaration at 13.) Selwyn claims that such a reallocation of inventories could meet carriers’ need for numbers without a new overlay.

In his Reply Declaration, Selwyn argues that this reallocation could be accomplished through the use of unassigned number porting (UNP). TCLA agrees that numbers assigned to ILECs that are not within continuous thousand blocks and/or not in blocks at the current contamination threshold represent substantial “pent-up” resources that the Commission should reallocate to other carriers. TCLA recommends that the Commission order the ILECs to identify rate centers containing such “pent-up” numbers, and adopt procedures for the required porting of such numbers, as needed by other carriers.

### **2. Discussion**

The County has failed to justify halting the implementation of the overlay based on its claim that the number shortage problem can be solved by requiring the ILECs to make available portions of their inventories to satisfy competing carriers’ needs. As discussed above, under FCC rules, carriers are entitled to keep a six-month inventory of numbering resources. The Commission

does not have the authority to order a “reallocation” of a carrier’s inventory to a level below the carrier’s six-month forecast, as permitted under FCC rules.

The County has likewise failed to show that 310 area code number shortages could be resolved by the porting of unassigned blocks of numbers. In this regard, it is not clear precisely what the County is proposing. On the one hand, Selwyn proposes that the Commission “ask carriers to *voluntarily* implement number porting at contamination rates at a higher percentage than 25%.” (Reply Declaration at 6, emphasis added.) Yet, Selwyn subsequently states that the Commission should “delay implementing an overlay and *require* number porting.” (Reply Declaration at 7, emphasis added.)

It is unclear whether Selwyn is proposing that the Commission merely “ask” carriers to “voluntarily” implement UNP or to “require” it on a mandatory basis. Whichever interpretation is intended, Selwyn has not shown how this proposal would justify halting the overlay.

Even assuming that UNP is otherwise technically and operationally feasible, the Commission does not have jurisdictional authority to implement UNP. Although the Commission, along with other parties, previously sought delegated authority to implement UNP in FCC rulemaking docket, 99-200, the FCC denied the request in Order 00-104.

Even assuming the Commission had authority to implement UNP on a voluntary basis, there is no reason to conclude that such voluntary porting would occur at a sufficient volume to eliminate the need for the overlay. Even if it may be technically possible to port unassigned numbers, Selwyn does not explain why a carrier would be motivated to voluntarily port unassigned numbers to a competing carrier, particularly in view of the disadvantages to the carrier. As noted by Selwyn, the April 30, 2004 NANC Report identified such

disadvantages under the category of “Service Provider concerns” associated with increasing contamination thresholds.

On the other hand, if Selwyn is proposing that the Commission “require” UNP at contamination rates at a higher percentage than 25%, such a proposal could not be implemented until or unless the FCC delegated additional authority to this Commission. Moreover, because the County raised the issue of UNP only in its third-round comments, other parties did not have the opportunity to express views on potential problems involved with UNP. In any event, the County has not provided a basis for concluding that carriers can be compelled to transfer portions of their inventories to other carriers as a means of solving the 310 area code number shortage. Selwyn has failed to show that UNP, either on a voluntary or mandatory basis, could be implemented as an alternative to the Overlay, particularly within the time frame set forth in D.05-08-040.

## **F. Claims that Industry Mergers and Consolidations Will Increase the Supply of Numbers**

### **1. Parties’ Positions**

The County claims that the “310 is likely to experience a significant increase in” numbering resources from the effects of recent industry mergers. In his Declaration, Selwyn identifies two recent wireless mergers (i.e., Cingular/ AT&T Wireless and Sprint/Nextel) and the recent mergers of SBC/AT&T and Verizon/MCI as events that will likely increase the supply of numbers in the 310 area code. Selwyn argues that increased number supplies as a result of these mergers were not considered in D.05-08-040. Selwyn also argues that there is no reference in D.05-08-040 to the significant level of industry consolidation that has occurred since 1999, with the attendant reduction in demand for new numbers.

Opposing parties argue that the hypothetical increase in resources claimed by the County defies common sense. With respect to the mergers of SBC/AT&T and Verizon/MCI, parties argue that it is difficult to understand how these mergers – which involve interexchange carriers who do not generally require numbering resources – would have any effect on numbering resources. Parties also argue that these mergers involved complimentary operations in a manner that would necessarily lead to any reduced demand for numbering resources.

## **2. Discussion**

We recognize that D.05-08-040 did not include an explicit discussion of industry mergers as they may relate to changes in available numbering resources. Even without an explicit discussion, however, the effects of industry consolidation that have generally occurred since 1999 were already reflected through the updating of number utilization and donation data that the Commission relied upon as a basis for D.05-08-040. The fact that the 310 area code overlay has been deferred from 1999 until 2006 is, in part, reflective of the industry consolidation that has reduced carriers' need of new numbers. The County has not presented any convincing argument, however, that recent industry mergers will significantly increase the available supply of numbering resources in the 310 area code, certainly not to the point where the overlay is no longer needed.

We recognize that AT&T and MCI, in their capacity as CLECs, each have inventories of numbers in certain rate centers of the 310 area code. We remain unconvinced, however, that the recent mergers necessarily result in the affected companies significantly reducing their combined requirements for numbering resources in the 310 area code. We find no basis to conclude that the

numbering inventories held by AT&T and MCI will be significantly reduced merely because they were each acquired by a holding company that also owns an ILEC. We recognize that the mergers offer opportunities for certain operational consolidations. In each of the major ILEC mergers, however, the operations of the ILEC have been characterized as largely complementary (rather than duplicative) to those of the CLEC being acquired. Based on that relationship, the County has not shown how the mergers will have a significant effect on numbering resources or on donations to the number pool. As such, we do not conclude that the effects of the above-referenced mergers provide any basis for modifying D.05-08-040 to halt implementation of the overlay.

**G. Claim that Number-Based Usage Fees Will Increase Number Supplies**

**1. Parties' Positions**

The County argues that additional numbering resources will become available as a result of the FCC's expected adoption of a new "numbers-based" universal service mechanism (expected to be in the range of \$1 per month per number). The County claims that this new mechanism, once it is in place, will create an incentive among carriers with large blocks of unused Direct Inward Dialing (DID) numbers to return them to their respective service providers (presumably to avoid incurring the charge). In his Reply Declaration, Selwyn argues that as a result of the per-number charge, carriers will no longer view their inventories of DID numbers as "free." Selwyn argues that the effects of this pending per-number charge were not taken into account in D.05-08-040, and as a result, that the Commission underestimated the potential supply of remaining numbers.

## **2. Discussion**

We recognize that the per-number charge referenced by Selwyn was not considered as a factor in D.05-08-040 in concluding that numbers were running out and a new area code was needed. Yet, in its Petition, the County has provided no convincing argument that the supply of numbers held in carrier inventory will materially change due to the FCC's numbers-based universal service mechanism.

Although Selwyn makes certain inferences suggesting that there may be excessive unused DID numbers, he provides no specific quantification of the specific magnitude of DID numbers included in a carrier's inventory. Likewise, the County provides no basis to infer that a per-number charge would necessarily cause carriers to reduce their inventory merely to avoid incurring the FCC charge. A carrier's need for numbers would not disappear merely because of a numbers-based charge. Instead of eliminating number resources otherwise needed for its inventory (other things being equal), a carrier might simply pass on any FCC charge to end-use customers through retail rates. In any event, the County has not provided a sufficient basis to halt the overlay on the basis that carriers can instead meet the continuing need for new numbers through additional donations of DID numbers by carriers in response to the numbers-based FCC charge.

### **H. Claim that the Commission Should First Resolve the Pending Issue Regarding Ten-Digit Dialing Before Implementing the Overlay**

#### **1. Parties' Positions**

The Commission is currently considering whether the statewide policy regarding the use of 1+10-digit dialing for all calls within an overlay

region should be amended prospectively. Although the Commission has declined to amend the existing 1+10-digit dialing rules with respect to the 310/424 area code overlay, the option was left open to consider a future revision in the dialing rules for in the 310/424 area code region, as deemed warranted, to promote consistency with any future overlays. The County argues that such an approach could disrupt the dialing patterns of customers in the 310/424 area code region twice. The County claims that a better approach would be to resolve the statewide 1+10-digit dialing issue prior to implementing the 310/424 area code overlay.

## **2. Discussion**

The County has not provided a justification for modifying D.05-08-040 to halt the overlay on the basis that the Commission's statewide 1+10-digit dialing policy dispute should be resolved first. In making this argument, the County is merely rearguing the 1+10 digit dialing issue as a justification for indefinitely delaying the overlay.<sup>20</sup> The Commission, however, has considered this issue at least two times before and determined that the overlay should not be delayed on this basis.<sup>21</sup>

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<sup>20</sup> Petition at pp. 14-16.

<sup>21</sup> See D.05-11-033 (Denying Application for Rehearing of Overlay Decision filed jointly by The Telephone Connection of Los Angeles, Inc. and The Telephone Connection Local Service, LLC (referred to collectively as "TCLA")); see also D.05-12-047 (denying in part and granting in part Carlson Petition for Modification of D.96-12-086).



**I. Claim that the Commission Should Seek a Waiver of the 1+10-Digit Dialing Requirement in the 310 Area Code Overlay Region**

**1. Parties' Positions**

The County argues that if the Commission does go ahead with implementation of the 310/424 area code overlay, it should seek a waiver of the 1+10-digit dialing requirement so as to avoid a disparity between customers in the overlay region versus those in the remaining portions of L.A. County where 7-digit dialing will continue to be in effect. The County argues that this disparity in dialing will create customer confusion and increase the potential for dialing errors.

**2. Discussion**

The concern raised by the County as to the potential for confusion and dialing errors as a result of the overlay is reargument of an issue that has already been addressed. We adopted the overlay as a replacement to a plan for an area code split in D.05-08-040 with express purpose of minimizing disruptions to the public. With an overlay, subscribers are not required to change their existing area code. Nonetheless, we recognized that an overlay requires different dialing patterns which could potentially lead to customer confusion. We addressed the concern over potential customer confusion resulting from the overlay in D.05-08-040 by implementing a Public Education Program. Accordingly, the County has failed to show that the potential for customer confusion is a reason to refrain from providing for needed area code relief. Rather, the proper response to concerns over potential confusion is public education concerning the new dialing patterns as already directed in D.05-08-040.

By proposing that the Commission petition the FCC for a waiver of the 1+10-digit dialing requirement, the County is likewise repeating an argument that we already addressed in D.05-08-040. As explained in that decision, we previously petitioned the FCC to remove the mandatory 10-digit dialing requirement associated with overlays. (See D.05-08-040 at 15.) On October 21, 1999, however, the FCC issued an order (FCC 99-243) denying several parties' requests for an exemption from mandatory 10-digit dialing for an overlay. Thus, the County fails to provide any new information a basis to modify D.05-08-040, to halt implementation of the overlay while the Commission yet again seeks waiver from the FCC of the 10-digit dialing requirement.

**J. Claim that the Commission Should Adopt a County-Wide Number Resource Management Policy Before Implementing the Overlay**

**1. Parties' Positions**

The County characterizes the 10-digit dialing requirement applicable to the 310/424 overlay area code as a “balkanization” of L.A. County because seven-digit dialing would still apply within the rest of L.A. County. Selwyn argues that such a “balkanization” should not be made solely on the basis of conditions purportedly extant in the 310 area code. (Declaration at 31.)

**2. Discussion**

The Commission has already considered this concern in adopting and ordering implementation of the overlay. The Commission has previously recognized that on a statewide basis, an overlay would create a disparity in dialing patterns between the overlay region and the remainder of California. In D.96-12-086, we determined not to require statewide mandatory 1+10-digit dialing concurrently with implementing an overlay, and that uniform treatment in dialing patterns should not be achieved by requiring all other customers outside of the overlay region to dial 10 digits for all calls. We concluded that, in this way, the overall burdens on Californians would be minimized. Nonetheless, in D.05-08-040, we acknowledged that the disparity in dialing patterns in the 310/424 area code overlay still constitutes a downside factor compared with the uniformity of a geographic split. On balance, however, even with this necessary drawback, we concluded the overlay was the appropriate overall solution.

The “balkanization” problem cannot be avoided, however, by refusing to carry out our mandated responsibility to provide needed area code relief. The Commission must meet its responsibility to provide area code relief

where needed to avoid code exhaust. Therefore, there is no basis to grant the Petition for Modification based on this argument.

## **V. Comments on Draft Decision**

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules and Practice and Procedure. Comments were filed on April 10, 2006 and reply comments were filed on April 17, 2006.

We have reviewed parties' comments on the Draft Decision in finalizing this order. In comments on the Draft Decision, certain parties reiterate their request that the Commission immediately institute a proceeding to consolidate or eliminate rate centers to help defer or eliminate the need for new area codes in the future. While we have already acknowledged that rate center consolidation/elimination may be a useful long-term strategy to explore, initiating such a proceeding is beyond the scope of the instant decision. We are here addressing only the limited question of whether to modify D.05-08-040 to defer implementing the 310/424 area code overlay. Parties' proposal to institute a new rate center consolidation proceeding would be relevant only with respect to future area code relief planning, but would not change the current schedule for implementing the 310/424 area code overlay. A similar principle applies to comments on the Draft Decision asking that the Commission add an ordering paragraph calling for immediate steps for implementing rules for unassigned number portability.

Parties' requests for the Commission to initiate a proceeding for either rate center consolidation/ elimination or unassigned number portability is beyond the limited scope of the instant decision, and would be more appropriately taken up in a separate order. In this regard, Rule 14.7 of the Commission's Rules of

Practice and Procedure sets forth the provisions for petitioning the Commission for a rulemaking to adopt, amend or repeal a regulation.

## **VI. Assignment of Proceeding**

Michael R. Peevey is the Assigned Commissioner and Thomas R. Pulsifer is the assigned ALJ in this proceeding.

## **Findings of Fact**

1. In D.05-08-040, this Commission adopted an overlay plan for the 310 area code, and directed implementation to commence based on the fact that number supplies would not otherwise remain in sufficient quantities to meet demand.

2. The Commission has undertaken numerous reforms since 1999 to ensure that numbering resources in the 310 area code are being utilized as efficiently as possible.

3. The Commission's staff has regularly monitored the status of numbering resources in the 310 area code since the 310 Number Utilization Report was released in the year 2000, and the Commission has diligently pursued all feasible means to ensure that numbers are allocated efficiently, fairly, and consistently.

4. The Commission relied on up-to-date numbering data in assessing the need for and timing of 310 area code relief, as adopted in D.05-08-040.

5. Even to the extent that future expectations as to demand growth for certain customer categories may have declined, the 310 area code still has technically already reached exhaust since no more full NXX codes remain available for assignment to carriers.

6. The question of rate center consolidation and/or elimination warrants further consideration as a potential long term strategy for extending area code lives, but is not a feasible alternative to implementing the 310/424 area code overlay.

7. Even assuming an ambitious schedule, proceedings to consolidate rate centers in the 310 area code could not be initiated and concluded quickly enough in order to avoid numbering supplies running out.

8. The Commission previously considered a Draft Decision as to whether this Commission has the authority to impose guidelines regarding the six-month inventory level of numbers that carriers may retain, and declined to adopt guidelines beyond what is already authorized by the FCC.

9. The FCC has determined that a carrier should be able to retain a sufficient number of thousands-blocks to meet its six-month forecast.

10. A relatively constant supply of carrier inventory is not evidence that plenty of numbers remain available in the 310 area code, but merely indicates that carriers have been drawing down the remaining supply of numbers to meet demand from sources *other than* carrier inventory.

11. Carriers generally have satisfied ongoing demand in the 310 area code by drawing new numbers from either the NXX lottery (where applicable) or through the thousand-block number pool.

12. Under current carrier inventory rules, carriers *cannot* obtain new numbers unless they can demonstrate a clear need for additional resources.

13. The County has not convincingly shown that recent industry mergers will significantly increase the available supply of numbering resources in the 310 area code, and certainly not to the point where the overlay is no longer needed.

14. The County has failed to show that 310 area code number shortages could be resolved by requiring the porting of unassigned blocks of carrier inventory, particularly in view of FCC rules permitting carriers to retain an inventory level based on carriers' six-month forecasts.

15. Even assuming that UNP is otherwise technically and operationally feasible, the Commission does not presently have jurisdictional authority to implement UNP.

16. The County has provided no convincing argument that the supply of numbers held in carrier inventory will necessarily change due to the FCC's expected adoption of a new "numbers-based" universal service mechanism.

17. In response to the FCC's "numbers-based" charge, a carrier might choose to simply pass on the charge to its end-use customers through retail rates instead of eliminating numbers otherwise needed for its inventory.

18. The County has not provided a justification for modifying D.05-08-040 to halt the overlay on the basis that the Commission's statewide 1+10-digit dialing policy dispute should be resolved first.

19. By proposing that the Commission petition the FCC for a waiver of the 1+10-digit dialing requirement, the County is likewise repeating an argument that was already addressed in D.05-08-040.

### **Conclusions of Law**

1. The County has not provided a proper basis for modifying D.05-08-040 in order to halt implementation of the 310/424 area code overlay indefinitely in order to conduct additional investigation and study.

2. The County has identified no new information that would change the conclusion reached in D.05-08-040 that a new area code must be implemented without delay in order to provide for a continuing supply of numbers in the 310 area code region.

3. The Commission properly recognized in D.05-08-040 that it is required under FCC rules to open a new area code where necessary to avoid code exhaustion and denial of numbering resources necessary for competitive service.

4. The Commission does not have delegated authority from the FCC to establish rules or requirements for carriers to reduce their own inventories of numbers below the level of a six-month supply based upon carriers' own forecasts.

5. Because the FCC has not delegated authority to this Commission to impose carrier inventory rules, the Commission previously concluded in D.05-08-040 that there was no basis to delay implementation of area code relief in the 310 area in order to develop carrier inventory guidelines.

6. The Commission does not have delegated authority from the FCC to implement UNP as an alternative way to meet carriers' need for new numbers in lieu of the 310/424 area code overlay.

7. Although the Commission should continue to explore ongoing opportunities to improve the utilization of numbering supplies as a long-term goal, including the potential for rate center consolidation/elimination, the Commission cannot reasonably postpone implementation of the 310/424 area code overlay in order to pursue additional efforts to extend the life of the 310 area code.

8. The Petition for Modification of D.05-08-040 should be denied.



**O R D E R**

**IT IS ORDERED** that the Petition for Modification of Decision 05-08-040 filed by the Los Angeles County is hereby denied.

This order is effective today.

Dated April 27, 2006, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
GEOFFREY F. BROWN  
DIAN M. GRUENEICH  
JOHN A. BOHN  
RACHELLE B. CHONG  
Commissioners